

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 4:001. Selection of Fish and Wildlife Resources Commission nominees.

RELATES TO: KRS 150.022, 150.023

STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department of Fish and Wildlife Resources to promulgate administrative regulations to carry out the purposes of KRS Chapter 150. KRS 150.022 requires that a meeting of sportsmen in a wildlife district be held to nominate five (5) candidates for membership on the Kentucky Fish and Wildlife Commission. These five (5) candidate names shall then be submitted to the Governor for his or her selection. This administrative regulation establishes the procedures for nominating the ~~[five (5)]~~ candidates for commission member.

Section 1. Scheduling of Meetings and Notification of the Public. (1) At least thirty (30) days prior to the expiration of the term of a member of the Fish and Wildlife Resources Commission, the commissioner shall select the time and place for a public meeting to select a list of five (5) nominees to submit to the governor. The meeting shall be held within a county of the wildlife district that is centrally located and easily accessible to the majority of the sportsmen of that district.

(2) The location of the meeting shall be in a public building with facilities adequate to accommodate the expected turnout. If more participants attend than the facilities can reasonably accommodate, the commissioner (or his or her designee) may order a change in location, if a suitable site is readily available, or may take whatever steps he or she deems necessary to insure the orderly and safe conduct of the meeting.

(3) Each meeting shall be called to order at 7:30 p.m. local prevailing time. If a change of location is called as provided for in subsection (2) of this section, the commissioner shall delay the beginning of the meeting for at least one (1) hour. The commissioner [He] may also delay the beginning of the meeting for any other reason he or she deems necessary, but under no circumstances may the commissioner convene the meeting earlier than the stated starting time.

(4) The facilities where the meeting is held shall be made available to the public at 6 p.m. local prevailing time.

(5) The commissioner shall cause to be published in each newspaper in the district a legal notice announcing the purpose, time and place of the meeting. The commissioner [He] shall also prepare and distribute news releases announcing the meeting to all major mass media outlets in the district. In addition, the commissioner shall prepare and distribute posters about the meeting for posting at each county courthouse in the district and at those places where sportsmen are known to gather or frequent.

Section 2. Conduct of the Meeting. (1) The commissioner, or an official of the department designated by the commissioner, shall serve as chairman of the meeting, and this chairman shall be the final arbiter of any disputes or procedural questions which may arise during the course of the meeting.

(2) After calling the meeting to order, the chairman shall explain the purpose of the meeting and the rules under which it will be conducted.

(3) The chairman shall then open the floor to nominations.

(4) As each name is placed in nomination, the nominee shall sign an affidavit attesting to his or her residency in the district.

(5) The chairman shall not close the nominations until he or she has called three (3) times for additional nominations and has received none. Motions to close the nominations shall not be recognized while there are still those waiting to place a name in nomination.

(6) Should no more than five (5) names be placed in nomination, the chairman shall declare that the purpose of the meeting has been fulfilled and shall adjourn the meeting.

Section 3. Balloting to Select Five (5) Nominees. (1) Should more than five (5) names be placed in nomination, the list of nominees shall be narrowed to five (5) names by secret ballots cast by the qualified sportsmen in attendance.

(2) The chairman shall direct each nominee to appoint at least one (1) individual to serve on a balloting committee. The chairman shall determine the number needed for this committee, and each nominee shall be allowed an equal number of committee members.

(3) Members of the balloting committee shall distribute ballots to the participants in the meeting. Each ballot shall consist of two (2) parts: an affidavit by which each participant shall attest to his or her legal right to participate in the selection process as stipulated in KRS 150.022 and a ballot with which the participant may vote for one (1) nominee.

(4) Each eligible participant shall complete the information requested on the affidavit and ~~[then all shall]~~ swear an oath attesting to the veracity of that information.

(5) Each eligible participant shall then vote for the nominee of his or her choice on the ballot provided. Ballot boxes, overseen by personnel of the department, will be available at designated exits. Each eligible participant shall hand the department employee his or her signed affidavit and shall place his or her ballot in the ballot box.

(6) After depositing his or her ballot, each participant shall immediately leave the meeting room and shall not return until all ballots are cast and the ballot boxes are closed.

(7) The ballot boxes shall be opened in the presence of the balloting committee, who shall count the ballots in the presence of the chairman or his or her designee(s).[

~~(8) Immediately after the ballots are counted and the results certified by the balloting committee, the chairman shall announce the full results of the balloting and shall then adjourn the meeting.]~~

(8[9]) Each member of the balloting committee shall sign an affidavit attesting to the ballot count and to the fact that, to the best of his or her knowledge, the process of distributing and counting the ballots was conducted in a fair and impartial manner. The chairman shall obtain a written statement from any committee member who feels that irregularities did occur during the course of the meeting.

(9) Immediately after the ballots are counted and the results certified by the balloting committee, the chairman shall announce the full results of the balloting and shall then adjourn the meeting.

Section 4. Resolving Disputes. (1) In the event of a tie vote for fifth and sixth place, the chairman shall settle the issue by the toss of a coin. Tie votes which do not affect the outcome of the selection of the five (5) names will not be resolved.

(2) Any other disputes, whether over vote counts or over procedural matters, shall be arbitrated immediately by the chairman, whose decision shall be binding unless subsequently overturned by the commission or the courts as stipulated below.

(3) Any individual who is aggrieved by a decision of the chairman or by any other action at the meeting may appeal in writing to the Fish and Wildlife Resources Commission within ten (10) calendar days after the meeting.

(4) Upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(5) Any party aggrieved by a final order of the commission may appeal to Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 5. Submission of the List of Nominees to the Governor. (1) The commissioner shall, within five (5) working days after the meeting, submit to the governor the names of the five (5) nominees chosen at the meeting.

(2) If balloting was used to limit the list to five (5) names, the commissioner shall not submit any ballot totals to the governor.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 28, 2021

FILED WITH LRC: August 5, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021 at 2:00 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This regulation establishes the procedure for nominating individuals for consideration as members of the Fish and Wildlife Commission.

(b) The necessity of the administrative regulation: The regulation is necessary to provide a mechanism for the selection of Fish and Wildlife Commission members.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.022 requires the Governor appoint Fish and Wildlife Commission members and provides vacancies shall be filled from a list of up to five (5) names submitted by the sportsmen of the corresponding commission wildlife district. This regulation establishes the system by which the sportsmen create the list of five (5) names to submit to the Governor.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides procedures for generating the list of nominees for a Fish and Wildlife Commission vacancy.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: It will improve the readability of the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to more clearly describe the procedures of a Fish and Wildlife Commission member nomination meeting.

(c) How does the amendment conform to the authorizing statutes: It provides a mechanism for the sportsmen of a district to create the list of nominees to be submitted to the Governor.

(d) How the amendment will assist in the effective administration of the statutes: It improves the clarity of the procedures described in the regulation.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All sportsmen of the Commonwealth that choose to participate in Fish and Wildlife Commission member nomination meetings.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not alter any actions any sportsmen will have to take to comply with the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no added cost to comply with the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The sportsmen will benefit when reading the regulation due to the greater clarity provided by the amended language.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional costs will be incurred.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The Fish and Game Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. There will be no increase in fees or funding necessary for this amendment.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. The amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all sportsmen are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.022 and 150.025

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The

regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer the amendments.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs to administer the amendments.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: